

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN BERTRAND BELIVEAU, JR. (2),

Defendant.

Case No.: 13CR3781-JLS

**ORDER DENYING DEFENDANT'S
MOTION FOR MODIFICATION OF
SENTENCE PURSUANT TO 18 USC
§3582(C)(2)**

[ECF No. 284]

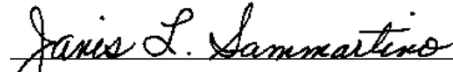
Currently pending before the Court is Defendant Beliveau's pro se Motion for Modification of Sentence Pursuant to 18 U.S.C. § 3582(c)(2) (ECF No. 284). Defendant contends that his 144-month sentence of imprisonment is impermissibly disparate to those of similarly situated defendants and that his counsel was ineffective for failing to adequately address this issue at sentencing. Plaintiff has not filed a response.

18 U.S.C. § 3582(c)(2) provides that a court may modify a term of imprisonment "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C [§] 994(o)..." Defendant Beliveau, however, was not sentenced pursuant to a Sentencing Guideline range that has subsequently been lowered by the

1 Sentencing Commission, nor does Defendant contend that he was. Instead, Defendant
2 attacks the validity of the sentence. An attack on the validity of a conviction or sentence
3 must be brought pursuant to 28 U.S.C. § 2255. *Muth v. Fondren*, 676 F.3d 815, 818 (9th
4 Cir. 2012) (“A motion under § 2255 is generally the exclusive remedy for a federal prisoner
5 who seeks to challenge the legality of confinement.” (citation omitted)). As Defendant
6 acknowledges, the instant motion filed approximately 3 years after his sentence became
7 final is time-barred under Section 2255. See 28 U.S.C. § 2255(f) (establishing 1-year
8 limitation period for motions under Section 2255). For these reasons, Defendant’s Motion
9 for Modification of Sentence Pursuant to 18 U.S.C. § 3582(c)(2) is HEREBY DENIED.

10 IT IS SO ORDERED.

11 Dated: June 22, 2023


12 Hon. Janis L. Sammartino
13 United States District Judge
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